

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

BARRY LEE HOYT

PLAINTIFF

v.

Civil No. 06-5115

DR. NEIL MULLINS;
NURSE SUE McDONALD; and
CAPTAIN HUNTER PETRAY

DEFENDANTS

ORDER

Defendants have filed a motion for summary judgment (Doc. 12). To assist plaintiff in responding to the summary judgment motion, the undersigned is propounding a questionnaire. The court will consider plaintiff's response to the questionnaire in issuing a report and recommendation on the summary judgment motion.

For this reason, Barry Lee Hoyt is hereby directed to complete, sign, and return the attached response to defendants' summary judgment motion on or before **June 11, 2007**. **Plaintiff's failure to respond within the required period of time may subject this matter to dismissal for failure to comply with a court order.**

IT IS SO ORDERED this 10th day of May 2007.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE

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DR. NEIL MULLINS;
NURSE SUE McDONALD; and
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DEFENDANTS

RESPONSE TO SUMMARY JUDGMENT MOTION

TO: BARRY LEE HOYT

These questions and answers will serve as your response to defendants' motion for summary judgment. You may use additional sheets of paper in responding to these questions.

You must file this response by **June 11, 2007**.

1. You were arrested and booked into the Benton County Detention Center on December 14, 2004.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page

6.

2. You were booked on charges of assault upon a law enforcement officer, sexual

assault, and failure to appear.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page 6.

3. Were the pending criminal charges the sole reason you were incarcerated?

Answer: Yes _____ No _____.

If you answered no, please state if your probation or parole had been revoked or if you were serving a term of imprisonment.

4. On December 13, 2004, you signed an inmate telephone system notice.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page 1.

5. On December 14, 2004, a warrant had been issued for your arrest on the charge of failure to appear.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page 5.

6. On December 16, 2004, Lt. Paul Carter submitted an affidavit of facts constituting probable cause for arrest. The affidavit reflects that at or about 12:00 p.m. on December 14, 2004, Deputy Michael Houston was assaulted by you when Houston attempted to arrest you as ordered by the Benton County Circuit Court.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page 2.

7. Specifically the probable cause affidavit stated you made a stabbing motion with an ink pen towards Houston's torso, swung at him with your closed fists, and threatened to kill him if he arrested you.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page 2.

8. When you were booked in on December 14th, you were given a copy of the Benton County Inmate Rights and Detainee Rules.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at pages 7-8.

9. A medical questionnaire was completed when you were booked in on December 14th and you indicated you had no health problems.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 1.

10. On January 7, 2005, you were placed in administrative segregation after having problems with inmates in D-149. It was felt you should be in administrative segregation for your own safety.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 1.

11. On January 7, 2005, you submitted a request stating that you would not fight. In response, you were told you would remain in administrative segregation.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 1.

12. On February 5, 2005, you submitted a medical request for "anti-cream."

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 2.

13(A). You were seen by Nurse McDonald on February 8th and given hydrocortisone cream to be applied to your heels for three nights.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 21.

(B). You received the prescribed hydrocortisone cream.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 24.

14. On March 31, 2005, you submitted a medical request asking to be checked for diabetes. You indicated that prior to your incarceration you had been a borderline diabetic.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 3.

15. You were seen by Nurse McDonald on April 1st. She noted you had no symptoms of diabetes.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 21.

16. Nurse McDonald noted that you had “flat affect. Confusion noted on questioning. Doesn’t know what diabetes is as a disease.”

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants’ Exhibit 2 at page 21.

17. On April 2, 2005, you were ordered to the back of your cell by Deputy Barrett and Deputy Buth, placed on the floor, handcuffed, and then escorted out of the pod.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants’ Exhibit 4 at page 2.

18. You were charged with disobeying the order of a deputy and given ten days lock-

down with loss of privileges. You appealed and Lt. Carter affirmed the decision.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 4.

19. You brought a civil rights case contending the deputies had used excessive force against you on April 2, 2005, *Hoyt v. Buth*, civil no. 05-5079. Judgment was entered in the defendants' favor in that case.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

20. On April 3, 2005, you submitted a request for medical attention stating you had been beaten and your head, foot, ear, and back were hurting.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 4.

21(A). You were seen by Dr. Mullins on April 4th. Dr. Mullins noted you reported being beaten by deputies but did not give any details. He noted that you had a small bruise on left third toe but it was not swollen and did not appear to have a fracture. With respect to your back examination, he noted your straight leg raising test was negative. He concluded your back pain was questionable. Dr. Mullins prescribed Ibuprofen 600 m.g., twice a day, for five days.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 5.

(B). You received the prescribed Ibuprofen.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 26.

22. On April 12, 2005, you submitted a medical request stating you were still hurting from being beaten. You stated you needed to see the doctor to get something for the pain.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 6.

23(A). You were seen by Dr. Mullins on April 14th and he prescribed Ibuprofen for five more days.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 21.

(B). You received the prescribed Ibuprofen.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 25.

24. On June 13, 2005, you asked to see the doctor about your medication. You indicated Ozark Guidance Center had been given you satarat, wellbutrin and desatoin.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 7.

25. You were seen by Dr. Mullins on June 14th.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 21.

26(A). What treatment did you receive by Dr. Mullins on June 14th?

Answer:

(B). From July 19th to August 15th you received Strattera and Wellbutrin.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at pages 27-28.

(C). Please state: (a) who prescribed the Strattera and Wellbutrin; and (b) who discontinued the Statterra and Wellbutrin.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

27. You were seen by Dr. Mullins on November 17, 2005, because you were complaining of pain in your lower back. You reported no history of a motor vehicle accident or other trauma. Dr. Mullins noted that your straight leg raising test was "absolutely negative." He concluded you had questionable back pain. He prescribed Ibuprofen, 600 m.g., twice a day, for four days.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 8.

28. You were seen by Dr. Mullins again on November 29th for complaints of back pain. Examination revealed a negative straight leg raising test. You reported that you had been beaten in April. Dr. Mullins noted no bruises or contusions on your back. Dr. Mullins concluded you had no serious problem with your back. He stated he saw no pathology and he

prescribed no medicine.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 9.

29. Dr. Mullins saw you on December 14th for complaints that your feet hurt. Upon examination, Dr. Mullins noted no swelling in your feet, no erythema, no contusion, and no bruises. Dr. Mullins noted you were no longer voicing complaints of back pain. You told Dr. Mullins that you had to sit down and rub your feet before you got up. Dr. Mullins told you it was probably a good thing to keep doing that. Dr. Mullins observed no serious pathology. He prescribed Ibuprofen, 600 m.g., twice a day, for four days.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 10.

30. On January 30, 2006, you submitted a medical request because you were in pain.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 11.

31. On January 30, 2006, you submitted a medical request because of an irritating itch of your skin and hair.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining please refer to Defendants' Exhibit 2 at page 12.

32. You were seen by Nurse McDonald on February 1, 2006, and advised to use soap every other day since it was causing your skin to itch.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 22.

33. On March 10, 2006, you submitted a medical complaint about dry elbows.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 13.

34. You were seen by Nurse McDonald in response to this request. She noted that you wanted a copy of your medical records.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain.

35. On April 12, 2005, you submitted a medical request noting that you were sick and your teeth were bothering you.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page

14.

36. You were seen by Nurse McDonald that day and she recommended that you gargle with salt water for four days and take Ibuprofen.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain.

37. On April 19, 2006, you submitted a medical request stating that you were really sick, hurting, and felt like throwing up.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page

15.

38. You were seen by Nurse McDonald on April 21st and you told her you were feeling better. She prescribed Ibuprofen.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain.

39. On July 11, 2006, you submitted a grievance stating that you had put in a medical request two and a half weeks ago about an irritation of your skin and pain and had not seen the nurse yet. In response, Captain Petray said your request would be forwarded to the medical.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 15.

40. You were treated by Nurse McDonald on July 14th and she prescribed hydrocortisone cream.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain.

41. On July 14, 2006, you submitted a medical request asking to be on bed rest because you had been throwing up a lot.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 17.

42. On July 26, 2006, you were seen by Dr. Mullins because of your complaints of stomach pain. Dr. Mullins noted you had acute abdominal pain—etiology uncertain. He prescribed Augmentin, Reglan, and a clear liquid diet. You were put on bed rest for the day.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 16.

43. You received the prescribed medication.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 30.

44. On July 27th, you asked if you could be taken off the liquid diet.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 18.

45. Were you taken off the liquid diet in response to your request?

Answer: Yes _____ No _____.

If you answered no, please explain what response you received and how long you remained on the liquid diet.

46. On August 2, 2006, you asked to see the nurse due to “rawness in your area from diarrhea.”

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants’ Exhibit 2 at page 19.

47(A). You were seen by Dr. Mullins that day. He examined your rectum and did not see any rash or irritation. He also noted you had gained four pounds since he had seen you on July 26th. He concluded you had a questionable irritation of your skin on the rectum and prescribed Triamcinolone ointment, twice a day, for three days.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants’ Exhibit 2 at page 20.

(B). You received the Triamcinolone ointment.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 29.

48. You received all medical care Nurse McDonald and Dr. Mullins believed in the exercise of their medical judgment you should receive.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain.

49. All decisions regarding your medical care were made by Dr. Mullins or Nurse McDonald.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain.

50. Captain Petray was not personally involved in making any decisions regarding your medical care.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, be specific.

51. Do you contend a policy or custom of Benton County caused you to be denied adequate medical care?

Answer: Yes _____ No _____.

If you answered yes, please describe in detail the policy or custom and how it operated to deprive you of adequate medical care.

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If you answered yes, please describe: (a) the physical injury you suffered; (b) the symptoms you experienced; (c) the severity of those symptoms; (d) whether you sought, or received, medical care as a result of the physical injury; and (e) how long it took you to recover from the injury.

[illegible]

54. Dr. Mullins did not ignore an acute or escalating situation with respect to your health.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, be specific.

55. Nurse McDonald did not ignore an acute or escalating situation with respect to your health.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, be specific.

56. You were seen by Nurse McDonald and Dr. Mullins on multiple occasions during your incarceration at the BCDC.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, be specific.

57. You received all medication prescribed by Nurse McDonald or Dr. Mullins.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, be specific.

Detail below any further response you would like to make to defendants' summary judgment motions. If you have any exhibits you would like the court to consider, you may attach them to this response.

[illegible]

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I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT.

EXECUTED ON THIS _____ DAY OF _____ 2007.

BARRY LEE HOYT